IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 370 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHAYABHAI KALUBHAI SOLANKI - Appellant(s)
Versus
MEHSANA DISTRICT COOP MILK PRODUCERS UNION LTD & 3 - Opponent(s)

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Appearance :

MS. TANHA PARIKH, FOR MR YOGESH S LAKHANI for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 2.
MR MEHUL SHARAD SHAH for Opponent(s) : 3 – 4.
MS.PANDIT, LD. ADDL. PUBLIC PROSECUTOR FOR OPPONENT NO.5.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 09/03/2007

ORAL JUDGMENT

This is an appeal preferred under Section 378 (4) read with Section 386 of the Code of Criminal

Procedure against the order of acquittal passed by the learned Chief Judicial Magistrate, Mehsana dated 26th February, 1993 in Criminal Case No.4092 of 1989. The appellant is original complainant, Assistant Law Officer of Gujarat State Pollution Control Board, Ahmedabad (hereinafter referred to as the 'Board'). That four accused were prosecuted by a private complaint for violation of Sections 24, 25 and read with Sections 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974.

2. Learned Counsel appearing for the appellant, Ms.Tanha Parikh, for Mr.Y.S.Lakhani, learned Advocate for the appellant has taken me through the contents of the conclusion of the order of acquittal. She has also taken me through the oral as well as documentary evidence led during the course of trial. According to her the order of acquittal is bad and requires to be reversed mainly on the grounds mentioned in the memo of appeal. The appellant was accorded leave to appeal and initially this appeal was listed alongwith one another Criminal Appeal No.363 of 1995. Certain points being similar, both these appeals were being

listed together, however as the accused are different and there is some difference between the nature of allegation made against the accused and other facts, the present appeal has been heard separately.

3. I have heard Ms.Parikh for the appellant, Mr.Mehul Sharad Shah for opponent Nos.1, 3 and 4 and learned A.P.P., Ms.Pandit, for opponent No.5. According to Mr.Shah, original accused No.2, Mr.V.M.Patel, has expired and therefore, the case against him stands abated.

4. While granting leave to appeal, this Court (Coram: K.J.Vaidya, J.) vide order dated 29th March, 1995 has observed thus:

"Looking to the urgency of the problem involved in the matter, the hearing of the appeal is fixed in the third week of June, 1995."

However, the appeal could not be heard though the same was listed on various occasions in the year 2006, so also, prior thereto alongwith other appeal.

5. To appreciate the rival side contentions,

firstly it would be proper to state the allegations made in the complaint. It is alleged that accused No.1 is a co-operative society registered under 'The Gujarat Co-operative Societies Act, 1961'. The accused No.2 was at relevant point of time the Managing Director of the Board of Directors and was concerned with day to day affairs and management of the accused No.1- Co-operative Society. The manufacturing process was looked after by accused No.3 and accused No.4 was Senior Manager (Production) and therefore responsible for maintenance of waste water treatment plant. It is alleged that accused No.1 was discharging about 20 to 25 lakhs liters of polluted water in one river known as Rupen flowing from the outskirts of Mehsana Town. The competent Officers of the Board had visited the manufacturing site of accused No.1 to ascertain whether trade effluent treatment plant is working satisfactorily or not? The accused No.1 was granted permission to start and continue manufacturing activities and discharge the effluent in Rupen River, mainly on two conditions that the quantity of industrial effluent shall not exceed 1000 m/ day and quantity of domestic

effluent from the factory shall not exceed 20 m/ day (Exh.17). Though, the permission was accorded, the accused was directed to see that within 12 months the water treatment and effluent plant should be erected and should start functioning, that condition was not complied with. Thus, for violation of condition No.3, the accused No.1- Co-operative Society was prosecuted for the offence punishable under Section 44 of the Water (Prevention and Control of Pollution) Act, 1974 and a Criminal Case No.315 of 1987 was pending. On 6th July, 1989, the Officer visited the plant. The dairy plant was working and in the same way the treatment plant was also working. The sample of the effluent that was being discharged through the small canal in the river was collected and the same was sent for analysis and it is alleged that the effluent that was being discharged by the accused No.1 was not within the tolerance limit. S.S.P. i.e, Total Suspended Solidust, total dissolved solidust, total chloride, biological oxygen demand, chemical oxygen demand were much more than the limit prescribed and the accused No.1 had erected outlets without obtaining necessary written permission.

6. To prove the allegation the prosecution has examined complainant and other witnesses i.e. Prosecution Witness No.2, Pradipbhai Kishorsinh, Prosecution Witness No.3, Samir Chandravadan Chokshi, Scientific Officer and Analysis, Prosecution Witness No.4, Ushakant Indrakumar. The learned Magistrate after evaluating the evidence decided to acquit the accused. On plain reading of the judgment it is clear that the finding is based on good and logical reasons. The complainant is a formal witness and he has no personal knowledge relating to the facts. The learned Magistrate has discussed in paragraph No.16 to 19 and 23 as to how the sampling process and the analysis of the sample drawn is defective qua the Statutory & Mandatory Rules mainly, Rule-21 of Pollution Control Act. It is clear from the evidence that no preservative was added at the time of acquiring sample. There is no cogent evidence of formative nature that Mr.Joshi, who was serving with the notice was the person authorized to accept notice before drawing sample. Learned Magistrate has observed that the prosecution mainly relies on the

prohibited percentage of effluent but for relying on this part of evidence, the prosecution should prove that preservative was used. Separate standards found fixed if each type of components that were allegedly found in excess in the water drawn as sample. The prosecution has not found as to the status of accused Nos.3 and 4 that how they can be prosecuted or otherwise responsible for erection of outlet without permission. The accused No.1 being a very big co-operative society having a large Board of Management, atleast Officer ought not to have been held responsible for erection of outlets without permission. It is possible to infer that water was being discharged without outlet which was found erected in violation of Scheme of Section 25 of the Act but the learned Magistrate has observed that permission was already sought and the same ought to have been dealt with efficiently and within time prescribed. Till seven months neither sanction nor rejection was intimated to the accused. So the accused would get advantage of sub-section 7 of Section 25 of the Act.

7. While dealing with other allegation qua the discharge of polluted effluent and water against the tolerance limit, the prosecution was under obligation to establish that the sample water was analyzed forthwith as prescribed by law. Though, it is alleged that the same was packed and sealed in ice-box but the delay of 27 days in analyzing the sample cannot be said to be a forthwith examination / analysis of the sample and this delay would go against prosecution. There is no allegation in the complaint that quantity of the water discharge was contrary to any direction or law. So, the Court is of the view that it will be difficult under the aforesaid circumstances, for this Court to say that the finding of acquittal is either perverse or basically illegal and the same is based on incorrect appreciation of evidence. In such a fact situation, the appeal against the acquittal cannot sustain and therefore the same requires to be dismissed.

8. It is settled that while dealing with the appeal against the acquittal the Court should go very slow and unless the finding is perverse and patently

illegal, the acquittal should not be reversed. Thus, the power to deal with the acquittal appeal is materially different than other appeal like appeal against the order of conviction or inadequacy of the quantum of punishment. This Court cannot rewrite the judgment and substitute its own order merely some other view could also have been taken by the trial Court. For short, there is no merit in the appeal.

9. In the result, the present Criminal Appeal No.370 of 1995 is dismissed. The judgment and order of acquittal passed by the learned Chief Judicial Magistrate, Mehsana in Criminal Case No.4092 of 1989 on 26th February, 1993 is hereby confirmed. Order and Direction accordingly.

(C.K.BUCH, J.)

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